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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF OREGON
9 AT PORTLAND

10 In Re:

11 JESSICA P SAM and
12 HA TO HA,
13 Debtors

Case No.: 13-32107-elp7

RESPONSE TO MOTION FOR
RECONSIDERATION

14 COMES NOW DEUTSCHE BANK NATIONAL TRUST COMPANY in its capacity as
15 indenture trustee for the Noteholders of AAMES MORTGAGE INVESTMENT TRUST 2005-2, a
16 Delaware statutory trust ("Deutsche Bank"), whose loan is serviced by Residential Credit Solutions,
17 and responds to the Debtors' Motion for Reconsideration for the Order of Relief from Automatic
18 Stay. Deutsche Bank is a secured creditor who holds a note secured by a deed of trust on property
19 located at 8230 SE Yamhill Street, Portland, OR 97216 ("the property"). Debtors allege that the
20 property is their primary residence in their sworn schedules.

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23 Debtors have filed a confusing motion. It appears to simply rehash Debtors' prior arguments
24 that Deutsche Bank is not the property party to assert a right to file a motion for relief from stay, and
25 ultimately proceed to foreclosure on the property. Nothing in the Debtors' Motion presents new
26 evidence for the Court to consider.

27 Response to Motion for Reconsideration- 1 -
28 60300-0230-BK-2\

1 Deutsche Bank filed a motion for relief from stay in the instant case on April 23, 2013. As
 2 Judge Dunn properly noted at the hearing held May 14, 2013, the bankruptcy case at issue is at least
 3 the third in the past year filed by these Debtors that affects the property. In each case, the Debtors
 4 have raised similar issues, and each time have failed to convince the Court that Deutsche Bank does
 5 not have standing to protect its interests in the property.
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7 Generally, the hearing on a motion for relief from stay is a summary proceeding that requires
 8 the bankruptcy court's action to be quick and is limited to determining whether "the creditor has a
 9 colorable claim to the property of the estate." Biggs v. Stovin (In re Luz Int'l, Ltd.), 219 B.R. 837, 842
 10 (9th Cir. BAP 1998).
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12 In Debtor Ha To Ha's previous bankruptcy case 12-38965-rld13, Debtor also claimed that
 13 Deutsche Bank did not have standing to pursue its claims as noted by the Court at the May 14, 2013
 14 hearing. Deutsche Bank brought the original promissory note to the hearing on confirmation of
 15 Debtor's plan. Please see Exhibit 2 to Debtors' Motion pages 4-5. The subject Note is endorsed in
 16 blank from Aames Funding Corporation, the original lender. This renders the instrument payable to
 17 the bearer thereof. Given that Deutsche Bank is currently in possession of the Note, it is payable to
 18 Deutsche Bank. As such, Deutsche Bank is the entity entitled to enforce the Note as its holder and
 19 thus is the proper party to file the subject Proof of Claim. See *Veal v. Am. Home Mortg. Servicing,*
 20 *Inc. (In re Veal)*, 450 B.R. 897, 555-56 (9th Cir. BAP 2011).
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24 The Debtors assert several arguments which involve failure comply with the terms of the
 25 Pooling and Servicing Agreement related to this Note and Deed of Trust. These arguments mainly
 26 focus on an alleged failure to assign the loan into the Pooling and Servicing Agreement prior to the
 27

1 closing date of the trust. However, since the Debtors are not parties to the Pooling and Servicing
2 Agreement, they lack standing to assert violations of that agreement. *See In re Correia*, 452 B.R.
3 319, 324 (1st Cir. BAP 2011) (finding that bankruptcy debtors could not assert that an assignment was
4 invalid due to non-compliance with the relevant PSA given that they were not parties to that
5 agreement); *see also In re Smoak*, 461 B.R. 510, 519 (S.D. Ohio 2011); *Bittinger v. Wells Fargo*
6 *Bank NA*, 744 F. Supp. 2d 619, 625-26 (S.D. Tex. 2010). As such, the Debtors' arguments related to
7 the Pooling and Servicing Agreement are improper.
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10 Deutsche Bank has standing to file the motion for relief from stay. Debtors have never
11 disputed that they are delinquent on their payments to Deutsche Bank, nor have they been able to
12 prove that Deutsche Bank does not have the requisite standing to proceed with a motion for relief
13 from the automatic stay, and ultimately to proceed with its state law remedies.
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16 Wherefore, Deutsche Bank requests that the Court deny the Debtors' Motion for
17 Reconsideration.

18 DATED this 18th day of June, 2013.

19
20 /s/ Lisa McMahon-Myhran

Lisa McMahon-Myhran, 000849

21 ROBINSON TAIT, P.S.

22 Attorney for DEUTSCHE BANK NATIONAL TRUST
23 COMPANY in its capacity as indenture trustee
24 for the Noteholders of AAMES MORTGAGE
25 INVESTMENT TRUST 2005-2, a Delaware statutory
26 trust
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The Honorable Elizabeth L. Perris

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON
AT PORTLAND

In Re:	BANKRUPTCY NO. 13-32107-elp7
JESSICA P SAM and HA TO HA	CHAPTER NO. 7
Debtors.	PROOF OF SERVICE

Janin Hendry, under penalty of perjury under the laws of the United States,
declares as follows:

1. That I am a citizen of the United States, over the age of 21 years, and
competent to be a witness herein.

2. That on June 18, 2013, I transmitted electronically and/or by depositing in
the United States mail, postage prepaid (as indicated herein), copies of the:
RESPONSE TO MOTION FOR RECONSIDERATION

addressed as follows:

Jessica P Sam
Ha To Ha
8230 SE Yamhill St
Portland, OR 97216

and to:

KENNETH S. EILER

Kenneth.eiler@psinet.com

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U.S. Trustee

USTPRegion18.PL.ECF@usdoj.gov

Dated June 18, 2013.

/s/ Janin Hendry
Janin Hendry